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EXAMINER

HOFSASS, JEFFERY A

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PAPER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte YEHUDA BINDER

Appeal 2017-003594
Application 14/301,544
Technology Center 2600

Before CARLA M. KRIVAK, HUNG H. BUI, and JON M. JURGOVAN,
Administrative Patent Judges.

KRIVAK, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from a Final Rejection of claims 10–13. Claims 14, 16–21, and 23–103 have been withdrawn from consideration, and claims 1–9, 15, and 22 have been cancelled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

STATEMENT OF THE CASE

Appellant's invention is directed to an apparatus and method for a motion sensing device including a motion sensor for "motion sensing and an annunciator responding to the sensed motion" (Title; Spec. 1:4–6).

Independent claim 10, reproduced below, is exemplary of the subject matter on appeal.

10. A device for signaling in response to a sensed motion, the device having a single enclosure, and in the single enclosure comprising:

an accelerometer attached to the single enclosure for producing an output signal responsive to the device acceleration;

a signaling component attached to the single enclosure for signaling to a person;

a software and a processor for executing the software, the processor coupled to the accelerometer and to the signaling component for activating or controlling the signaling component in response to the output signal;

a rechargeable battery connected to power the device; and
a battery charger connected for contactless charging of the rechargeable battery,

wherein the accelerometer comprises, consists of, uses, or is based on, a piezoelectric, piezoresistive, capacitive, Micro-mechanical Electrical Systems (MEMS), or electromechanical accelerometer, and wherein the signaling component is a visible light emitter for emitting a visible light indicating a first status to the person.

REFERENCES and REJECTION

The Examiner rejected claims 10–13 under 35 U.S.C. § 103(a) based upon the teachings of Willner (US 5,810,685; issued Sept. 22, 1998), Kuesters (US 6,113,504; issued Sept. 5, 2000), and Connelly (US 5,236,383; issued Aug. 17, 1993).

ANALYSIS

With respect to independent claim 10, the Examiner finds Willner teaches all of Appellant's claimed limitations, but does not disclose "that the battery is rechargeable and that a battery charger can be connected and the particular type of accelerometer and a visual indication" (Final Act. 4–5 (citing Willner Abstract; Fig. 5)). The Examiner finds Kuesters teaches a rechargeable battery connected to power a device, and a battery charger connected for contactless charging, and relies on Connelly for teaching a capacitive accelerometer and a visible light emitter for emitting a visible light indication (Final Act. 5 (citing Kuesters col. 4, ll. 22–40, Fig. 3; Connelly col. 3, l. 9–col. 5, l. 8, Abstract, Fig. 7)). The Examiner further finds it would have been obvious to combine Willner with Kuesters "to provide a more convenient way to renew the power source of the device," and Willner, Kuesters, and Connelly to provide a renewable power source, "a visual indication which would be more recognizable in a noisy environment," and a capacitive sensor as an accelerometer (Final Act. 5–6).

Appellant does not contest the features of Willner, Kuesters, or Connelly. Nor does Appellant dispute the Examiner's rationale for combining Willner, Keusters, and Connelly. Rather, Appellant only contends the rejection of claim 10 is improper because this claim combines parent application's claims 11 and 15, which were restricted by the Examiner as "*subcombinations [which] are distinct . . . and **are not obvious variants***" (Br. 3–4 (citing Election/Restriction Requirement issued on January 14, 2014 in parent US Application 13/427,150, p. 11)). Therefore, Appellant asserts, "claim [10] combining both limitations [of parent

application's claims 11 and 15] is clearly non-obvious and thus patentable" (Br. 4).

Appellant's argument is not persuasive. As recognized by the Examiner, a "restriction requirement is made for diverse subject matter, but there is no presumption of allowability just because the diverse subject matter is now combined[,] as shown by the rejection of the[] claims" based upon Willner, Kuesters, and Connelly (Ans. 5). Appellant appears to read the word "obvious" in the phrase "not obvious variants" as meaning not obvious under a § 103 obviousness rejection. However, the Examiner correctly uses this term to mean the claims are restricted because they are unrelated, i.e., not obvious variants. *See also* MPEP § 802.01 II (9th ed. 2015; rev. Nov. 2015) ("Related inventions are distinct if the inventions *as claimed* are not connected in at least one of design, operation, or effect . . . and wherein at least one invention is PATENTABLE (novel and nonobvious) OVER THE OTHER (*though they may each be unpatentable over the prior art*)" (emphasis added)).

As Appellant has not addressed or identified reversible error in the Examiner's obviousness rejection of claim 10 based on the combination of Willner, Kuesters, and Connelly, we summarily affirm the rejection of claim 10 for the reasons presented by the Examiner. We also sustain the rejections of dependent claims 11–13, which are also not addressed in Appellant's Brief (*see* Br. 3–4).

DECISION

The Examiner's decision rejecting claims 10–13 is affirmed.

Appeal 2017-003594
Application 14/301,544

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED